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What is at Stake in Impeachment?

Bill Clinton's Sworn Testimony as a Model for Others

"There is therefore but one categorical imperative, namely, this:
*Act only on that maxim whereby thou canst at the same time will
that it should become a universal law.*" Immanuel Kant (1785)

Serious charges have been leveled against the President of the United States. The House of Representatives is considering impeachment. The entire world has been exposed to President Clinton's conduct. However, perhaps the most consequential and long-standing effects of the President's actions and the congressional response will be felt *not* in the White House *but wherever Americans raise their hand and swear an oath to tell the truth.*

The Charges Against the President. It is essential to remember that the charges lodged against President Clinton by the Office of Independent Counsel do *not* include any charge of sexual misconduct. *Mr. Clinton is accused of undermining and impairing the processes by which we search for truth.* The "Starr report" that was filed with the House of Representatives charges that President Clinton —

- *lied under oath* at a civil deposition while he was a defendant in a sexual harassment lawsuit;
- *lied under oath* to a grand jury that was investigating obstruction of justice;
- *attempted to influence the testimony of a potential witness* who had direct knowledge of facts that would reveal the falsity of the President's testimony;
- *attempted to obstruct justice* by facilitating a witness's plan to refuse to comply with a subpoena; and
- *attempted to obstruct justice* by encouraging a witness to file an affidavit that the President knew would be false, and then by making use of that false affidavit at the President's own deposition.

Are the Charges Grave or Petty? According to the newspapers, many Americans do not seem to believe that the President's actions were particularly grave. There are Senators and Representatives who agree. *Perhaps those who discount the gravity of the charges are focusing on the President's liaisons with Miss Lewinsky and not on his encounters with the judicial process* — but it is the latter that Mr. Starr reported to the House of Representatives because such acts "may constitute grounds for impeachment."

In reflecting on the charges, it may be helpful to think about Mr. Clinton's testimony as a model for sworn testimony everywhere. *Is President Clinton's behavior under oath the kind of behavior that ought to be tolerated universally? Will Congress's response to the behavior make it more or less likely that other witnesses will follow the President's example?* Asking these questions is one way to consider whether the charges against the President are grave or not.

A Test for Measuring the Gravity of the Charges. Consider the following hypothetical amendment to the federal criminal code:

No person may be convicted of obstruction of justice, perjury, subornation of perjury, or false swearing before a court or grand jury for any act or omission done —
(a) to prevent embarrassment to such person or such person's family,
(b) to keep private such person's consensual sexual activities, or
(c) to prevent discredit to the position held by such person.

The hypothetical amendment could be defended on grounds of simple equity: Whatever is good enough for the President should be good enough for the average citizen, and the hypothetical amendment merely codifies the standard that the White House seems to be urging. *If the President can wiggle around his oath to tell the truth to avoid personal, familial, professional, or political embarrassment, then shouldn't the average citizen be entitled to the same wiggle-room when he or she takes an oath?*

If this hypothetical amendment were introduced in Congress, our guess is that it would receive, approximately, zero votes. *The Congress of the United States — which writes the laws whereby the judicial system pursues truth in the interests of law, liberty, and justice — would be understandably reluctant to authorize lying under oath whenever a witness believed that telling the truth would be embarrassing.*

The amendment above is imaginary, but the charges against the President are entirely real. What Congress does in response to those charges will have implications for the presidency, *but even more momentous are the implications for millions of legal disputes, civil and criminal, where witnesses are sworn to tell the truth, the whole truth, and nothing but the truth.*

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Note: The hypothetical amendment would directly affect the following sections of the criminal code:

"§1621. Perjury generally. Whoever (1) having taken an oath before a competent tribunal . . . that he will testify, declare, depose, or certify truly . . . willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury and shall . . . be fined under this title or imprisoned not more than five years, or both. . . ."

"§1622. Subornation of perjury. Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both."

"§1623. False declarations before grand jury or court. (a) Whoever under oath . . . in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration . . . shall be fined under this title or imprisoned not more than five years, or both."

Chapter 73 of Title 18, "Obstruction of Justice," contains 18 sections, including §1512 which prohibits tampering with a witness. Under §1512(b) and §1515(a), it is unlawful "in a proceeding before a judge or court of the United States," [1] to "knowingly make a false statement" with the intent to "influence" the testimony of any person, or [2] to "corruptly persuade" another to "withhold" or "conceal" a "record, document, or other object."